

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ELECTION PETITION No 4 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARUBHAI GONDALIA

Versus

GOHIL SHAKTISINHJI HARISHCHANDRA SINGHJI

Appearance:

Mr. Bharat Pandya for Mr. Y.N. Oza for Petitioner
MR TUSHAR MEHTA for Respondent No. 1
MRS VASAVDATTA BHATT for Respondent No. 3
MR VH DESAI for Respondent No. 5, 7 & 9
Rest served.

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 13/08/97

ORAL JUDGEMENT

Harubhai Gondalia, the petitioner, challenges the election of respondent No.1, the returned candidate, sponsored by Indian National Congress- INC as the M.L.A. from 58, Bhavnagar South Assembly Constituency, inter alia, on the ground that the same is illegal, arbitrary, suffers from malafides, corrupt practices, political influences and other corrupt practices as understood

within the meaning of Section 100 of the Representation of Peoples Act, 1951 (hereinafter referred to as 'the Act' for short).

The learned counsel Mr. Tushar Mehta who appears for the respondent No.1, the returned candidate, raises a preliminary objection regarding maintainability of the election petition saying that the same requires to be dismissed regard been had to the fact that the mandatory provisions contained in Sections 81, 82 and 86 of the Act have not been complied with.

This contention comes from the learned counsel Mr. Tushar Mehta for the respondent No.1, the returned candidate, in the midst of the facts and circumstances indicated hereinafter.

Regard been had to the contention coming from the learned counsel Mr. Tushar Mehta and looking to the pleadings of the returned candidate, respondent No.1, the following issues were framed:

1. Whether the petition is liable to be
dismissed as not maintainable, as not
disclosing any cause of action for
challenging Election of Respondent No.1?
2. Whether the petitioner proves that, his
nomination paper was illegally rejected?
If yes, what is the effect thereof on
validity of Election in question?
3. Whether the respondents prove that the
present petition is not maintainable in
view of the bar contained in Article 329
(B) of the Constitution of India?
4. Whether the respondents prove that the
present petition in the present form is
not maintainable and that the same
deserves to be dismissed for
non-compliance of mandatory requirements
of Section 80, 81, 82, 83 and 84 of the
Representation of Peoples Act, 1951?
5. What order?

Issue No. 4 is ordered to be heard as preliminary issue.

The petition which has been presented to the Court contains the prayer clause in para 66 (B) which reads

thus:

"(B) Your Lordships will be pleased to quash and set aside the election and notification declaring the election of respondent No.1, Gohil Shaktisinhji Harishchandra Singhji sponsored by Indian National Congress (INC) as Member of Legislative Assembly from 58-Bhavnagar-South-Constituency in the election held on 25th February 1995 with all consequential and incidental orders of this Honourable Court; and further be pleased to declare that election of respondent No.1, Gohil Shaktisinhji Harishchandra Singhji sponsored by Indian National Congress (INC) as Member of Legislative Assembly from 58Bhavnagar-South-Constituency in the election held on 25th February 1995 is ab initio void and illegal and be further pleased to declare that the petitioner, namely, Harubhai Gondalia, as having been duly elected as Member of Legislative Assembly from 58-Bhavnagar-South-Constituency in the election held on 25th February 1995 with all consequential and incidental orders of this Honourable Court".

Anyhow, the said prayer clause in the copy of the petition supplied to the respondent No.1, the returned candidate, reads thus:

"(B) Your Lordships will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus quashing and setting aside the election and notification declaring the election of respondent No.1, Gohil Shaktisinhji Harishchandra Singhji sponsored by Indian National Congress (INC) as Member of Legislative Assembly from 58-BhavnagarSouth-Constituency in the election held on 25th February 1995 with all consequential and incidental orders of this Honourable Court; and further be pleased to declare that election of respondent No.1, Gohil Shaktisinhji Harishchandra Singhji sponsored by Indian National Congress (INC) as Member of Legislative Assembly from 58-Bhavnagar-South-Constituency in the election held on 25th February 1995 is ab initio void and illegal and be further pleased to declare that the petitioner, namely, Harubhai Gondalia, had been elected as Member of Legislative Assembly from

58-Bhavnagar-South-Constituency in the election held on 25th February 1995 with all consequential and incidental orders of this Honourable Court."

The contention coming from the learned counsel Mr. Tushar Mehta is based upon a conjoint reading of the said prayer clause in the petition before the Court and the prayer clause of the copy furnished to the respondent No.1, the returned candidate. The learned counsel urges that there has been the violation of the mandatory provisions contained in Sections 81, 82 and 86 of the Act.

Upon a conjoint reading of the abovesaid prayer clause in the petition before the Court and in the copy of the petition supplied to the respondent No.1, the returned candidate, it appears that there has been a material change. The copy of the petition supplied to the returned candidate in prayer clause 16 (B) speaks of the issuance of a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus quashing and setting aside the election and the notification declaring the election of respondent No.1 as the Member of the Legislative Assembly from the concerned constituency with all consequential and incidental orders. Prayer clause in the petition before this Court is entirely different. The prayer clause in the petition before this Court as quoted hereinabove prays for the quashing and setting aside of the election and the notification declaring the election of the respondent No.1, the returned candidate, as the Member of the Legislative Assembly from the concerned constituency.

Thus, it appears that the prayer clause in the petition before this Court and the copy supplied to the respondent No.1, the returned candidate, differs in material particulars.

The legal position in this respect appears to be a settled one. But before going to the case law the reference requires to be made to the statutory provisions of the Act. In this respect Section 81 of the Act speaks in respect of the presentation of the petitions. Sub-clause (3) of Section 81 of the Act mandates that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and that every such copy shall be attested by the petitioner under his own signature, to be a true copy of the petition. Section 83 of the Act says that an election petition shall contain the concise statement of the material facts and shall set forth full particulars

of any corrupt practice and shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code, 1908 for the verification of pleadings. Section 86 of the Act says that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 and 117 of the Act. Therefore, upon a conjoint reading of the above-said provisions of the Act, there remains little doubt in coming to the conclusion that every election petition is to be accompanied by as many copies thereof as there are respondents mentioned in the petition and that every such copy shall have to be attested by the petitioner under his own signature to be a true copy of the petition and that if the provisions contained under Section 81 of the Act are not complied with the High Court shall have to dismiss the election petition on that ground. The statutory provisions under the Act are, therefore, clear and are supporting the preliminary contention being raised by the learned counsel Mr. Tushar Mehta for the returned candidate in respect of the maintainability of the present petition in the aforementioned facts and circumstances.

Going to the case law on the subject, the reference requires to be made to the Supreme Court pronouncement in Jagat Kishore Prasad Narain Singh..Appellant v. Rajendra Kumar Poddar and others..Respondents, 1970 (2) SCC 411. This decision rendered by the Apex Court while taking into consideration the provisions contained in Sections 81, 82, 86 and 117 of the Act says that the Election Petition in question was liable to be dismissed under Section 86 of the Act as the provisions of Section 81 (3) are not complied with. This has been done by the Supreme Court in light of the fact situation that there were discrepancies between the original petition and the copies served and that divergence was found to be bound to mislead the contesting respondents and prejudice their defence. It has been pointed out by the Apex Court that the pleading in a case has great importance and that is more so in election petitions particularly when the returned candidate is charged with corrupt practice. This decision, therefore, would definitely go to the assistance of the learned counsel Mr. Tushar Mehta when he urges that the petition before me requires to be dismissed on the ground of non-compliance with the statutory requirements contained in Sections 81, 82 and 86 of the Act.

The very same principle would follow from the Supreme Court pronouncement in Rajendra Singh..Appellant v. Smt. Usha Rani and others..Respondents AIR 1984 SC 936. It

was the case in which incorrect copies of election petition were filed and respondents had got incorrect copies. In light of this fact situation, the Supreme Court has come to the conclusion that it amounts to non-compliance of the provisions contained in Section 81 (3) of the Act and that the petition was liable to be dismissed on that ground.

Before parting, it requires to be mentioned that the learned counsel Mr. Tushar Mehta for the respondent No.1, the returned candidate, has presented a xerox copy of the petition furnished to him under the signature of the petitioner saying that same may be taken on the record of the present petition.

Thus, regard been had to the contention coming from the learned counsel Mr. Tushar Mehta for the returned candidate and regard been had to the statutory provisions well explained by the case law indicated hereinabove, it appears that the present petition requires to be dismissed as not being in conformity with the abovesaid statutory requirements of the Act. The issue, therefore, requires to be answered in affirmative and the same is hereby accordingly answered in affirmative.

Therefore, I order the dismissal of the present petition with costs.

The Registry is requested to take appropriate action as envisaged under Section 106 of the Act.